

EXHIBIT 9

Transcript of Marcus Kitchens, Jr., M.D.
February 17, 2023

1 (1 to 4)

1	3
<p>1 UNITED STATES DISTRICT COURT</p> <p>2 EASTERN DISTRICT OF PENNSYLVANIA</p> <p>3 -----</p> <p>4</p> <p>5 DR. MARKCUS KITCHENS, JR.,)</p> <p>6 Plaintiff,)</p> <p>7 vs.) Civil Action No.</p> <p>8) 2:22-cv-03301-JFM</p> <p>9 NATIONAL BOARD OF MEDICAL)</p> <p>10 EXAMINERS,)</p> <p>11 Defendants.)</p> <p>12 -----)</p> <p>13</p> <p>14 REPORTER'S TRANSCRIPT</p> <p>15 DEPOSITION OF</p> <p>16 DR. MARKCUS KITCHENS, JR.</p> <p>17 FRIDAY, FEBRUARY 17, 2023</p> <p>18 REMOTE VIDEO TELECONFERENCE</p> <p>19</p> <p>20 9:01 a.m. PST</p> <p>21 to</p> <p>22 2:31 p.m. PST</p> <p>23</p> <p>24 Stenographically Reported by: Burgundy B. Ryan, RPR,</p> <p>25 CSR No. 11373 / Pages 1-211</p>	<p>1 I N D E X</p> <p>2 PAGE</p> <p>3 EXAMINATION BY MR. BURGOYNE..... 7</p> <p>4 --o0o--</p> <p>5 E X H I B I T S</p> <p>6 EXHIBIT DESCRIPTION PAGE</p> <p>7 01 Initial Request for 48</p> <p>8 STEP 1 Accommodation</p> <p>9 02 Email Thread 86</p> <p>10 03 Second Request for 108</p> <p>11 STEP 1 Accommodation</p> <p>12 04 Subsequent Request for 136</p> <p>13 STEP 1 Accommodation</p> <p>14 05 First Amended Complaint 141</p> <p>15</p> <p>16 06 Affidavit of Alyssa Hanna 151</p> <p>17 07 Motion for Preliminary Injunction 156</p> <p>18 08 Plaintiff's Memorandum in Support of 159</p> <p>19 Motion for Preliminary Injunction</p> <p>20 09 Declaration of Marcus Kitchens, Jr. 178</p> <p>21 10 Notice of Supplemental Filing 191</p> <p>22 11 Declaration of Missie King 198</p> <p>23 12 Medical Records 119</p> <p>24 13 Diagnostic Interview 111</p> <p>25 14 Letter from The Department of Medicine --</p> <p>15 15 Email dated 2/10/2023 199</p> <p>16 16 AAMC Document "How to Apply for 201</p> <p>17 Residency Positions"</p>
2	4
<p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 ON BEHALF OF THE DEFENDANT:</p> <p>4 PERKINS COIE, LLP</p> <p>5 By: BOB BURGOYNE, Esquire</p> <p>6 700 Thirteenth Street, NW</p> <p>7 Suite 800</p> <p>8 Washington, D.C. 20005</p> <p>9 202.654.6200</p> <p>10 rburgoyne@perkinscoie.com</p> <p>11</p> <p>12 ON BEHALF OF THE PLAINTIFF:</p> <p>13 DR. MARKCUS KITCHENS, JR.,</p> <p>14 Acting in Propria Persona</p> <p>15 Markzwanz@gmail.com</p> <p>16</p> <p>17 ALSO PRESENT:</p> <p>18 MALCOLM COOKE, Technician</p> <p>19 Planet Depos</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 E X H I B I T S</p> <p>2 EXHIBIT DESCRIPTION PAGE</p> <p>3 17 AAMC Document "Register for 202</p> <p>4 MyERAS for Residency"</p> <p>5 18 AAMC Document "ERAS 2023 204</p> <p>6 Residency Timeline"</p> <p>7 19 ECFMG Document 205</p> <p>8 20 ECFMG Document "Deadline Reminder" 207</p> <p>9 21 ECFMG Document "Requirements for 210</p> <p>10 ECFMG Certification"</p> <p>11 22 Multi-page Document re: 103</p> <p>12 "USMLE website"</p> <p>13 23 Connors CPT-3 Assessment Report 175</p> <p>14 24 3/11/2022 Letter from 168</p> <p>15 Regard Law Group</p> <p>16 --o0o--</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

Transcript of Marcus Kitchens, Jr., M.D.

7 (25 to 28)

February 17, 2023

<p>25</p> <p>1 A. I started -- yes. So August, but official</p> <p>2 start date was, I think I have in there, it should have</p> <p>3 been October.</p> <p>4 Q. Okay. I just got that date from one of your</p> <p>5 filings so I'm not --</p> <p>6 A. Okay. So, yes. So August, yes, that is when I</p> <p>7 was accepted.</p> <p>8 Q. Okay. And then you received your M.D. degree</p> <p>9 from that institution in January 2021?</p> <p>10 A. Yes.</p> <p>11 Q. Have you received any other degrees apart from</p> <p>12 your B.A. degree and your M.D. degree?</p> <p>13 A. No, I have not.</p> <p>14 Q. Have you enrolled in any other coursework or</p> <p>15 graduate programs?</p> <p>16 A. Yes. Capella University.</p> <p>17 Q. And is that an online or --</p> <p>18 A. Yes.</p> <p>19 Q. -- in person? It's online?</p> <p>20 A. This is correct.</p> <p>21 Q. And when did you enroll in that?</p> <p>22 A. I enrolled in that after I graduated medical</p> <p>23 school. So I think this was -- actually 2020 -- was it</p> <p>24 2022 I think actually, so this past year. But let me --</p> <p>25 but I need to probably clarify that though.</p>	<p>27</p> <p>1 courses.</p> <p>2 Q. Okay. And if you were going to take that</p> <p>3 program in the standard amount of time, do you know how</p> <p>4 long it would take to -- to get the master's degree?</p> <p>5 A. I -- I want to say that less than two years</p> <p>6 probably two years for that master's program.</p> <p>7 Q. And why did you decide to begin that program?</p> <p>8 A. Well I decided to begin that program because</p> <p>9 while I wasn't going to be able to go to -- for</p> <p>10 medical -- for residency because of the taking the exams</p> <p>11 of -- the struggles that I had with those and also</p> <p>12 knowing that -- that student loans was going to be</p> <p>13 kicking in, when as a medical student, I mean, you can</p> <p>14 imagine how many student loans I have. So by enrolling</p> <p>15 in another program, it would show that I am still a</p> <p>16 student so those loans would be deferred.</p> <p>17 Q. Okay.</p> <p>18 A. That was really the main focus of going into</p> <p>19 that master's program.</p> <p>20 Q. Who do you have loans with, are those</p> <p>21 government loans, U.S. government loans or private</p> <p>22 banks?</p> <p>23 A. Yes. U.S. loan.</p> <p>24 Q. U.S. government loans?</p> <p>25 A. Yes.</p>
<p>26</p> <p>1 Q. Sure. Go ahead.</p> <p>2 A. Okay. I don't have it -- I don't have it right</p> <p>3 in front of me. Sorry.</p> <p>4 Q. Okay. No, that is fine. You mean you were</p> <p>5 just going to clarify the date?</p> <p>6 A. Yes, sir, just the date.</p> <p>7 Q. Okay. Okay. No, that is fine. Not that</p> <p>8 important.</p> <p>9 How many -- how many -- well, I apologize.</p> <p>10 What type of courses are you taking through Capella</p> <p>11 University?</p> <p>12 A. Well currently I'm not taking any courses.</p> <p>13 Q. Okay. What -- what type of program are you</p> <p>14 enrolled in?</p> <p>15 A. I was enrolled in the health care</p> <p>16 administration, master's of health care</p> <p>17 administration.</p> <p>18 Q. And how long does that program last in order</p> <p>19 for you to get a master's degree?</p> <p>20 A. It's self-paced.</p> <p>21 Q. So --</p> <p>22 A. So there is no -- literally they have different</p> <p>23 programs where you have self-pace and also structured</p> <p>24 pace, and I have the un -- I went with the unpaced for</p> <p>25 myself so I have until whenever I complete all of the</p>	<p>28</p> <p>1 Q. And are you able to get loans as a -- a student</p> <p>2 attending a foreign medical school you were able to get</p> <p>3 the U.S. loans?</p> <p>4 A. Yes, I am. The medical university of Lublin</p> <p>5 accreditation with the United States is -- is one that</p> <p>6 has become strong over -- I think they have to have a</p> <p>7 minimum of like 10 to 15 years of being accredited with</p> <p>8 the United States before they can apply for those</p> <p>9 particular loans -- to get those accreditations. And</p> <p>10 yes, you apply straight through like you would applying</p> <p>11 for a U.S. school.</p> <p>12 Q. Okay. Help me understand a little bit more</p> <p>13 about just your experience going to medical school in</p> <p>14 Poland. Was that in person? Did you go to Poland to</p> <p>15 attend classes?</p> <p>16 A. Yes, absolutely. And they were very strict on</p> <p>17 attendance.</p> <p>18 Q. Okay.</p> <p>19 A. Very -- very structured, which is one thing</p> <p>20 I -- I -- really helped me a lot to actually help me</p> <p>21 make it through.</p> <p>22 Q. Okay. And where did you do your clinical</p> <p>23 rotations?</p> <p>24 A. I did my clinical rotations at Jackson Park</p> <p>25 Hospital in Chicago and also at Brentwood Hospital in</p>

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Transcript of Marcus Kitchens, Jr., M.D.

8 (29 to 32)

February 17, 2023

<p style="text-align: right;">29</p> <p>1 Shreveport, Louisiana.</p> <p>2 Q. Could you spell Brentwood for us?</p> <p>3 A. Yes. B-r-e-n-t-w-o-o-d.</p> <p>4 Q. Okay. And that was in Shreveport?</p> <p>5 A. Yes.</p> <p>6 Q. Have you done any clinical rotations as part of</p> <p>7 your medical education at any other institutions?</p> <p>8 A. Yes. Mayo Clinic. I had an internship</p> <p>9 there.</p> <p>10 Q. What type of internship and when was that?</p> <p>11 A. That was a family medicine internship that I</p> <p>12 applied for and received and that was in 2000 -- let's</p> <p>13 see, I got 2018. 2018.</p> <p>14 Q. Did you participate --</p> <p>15 A. But, Bob, I would like to get back with you</p> <p>16 specifically on that date, though, but I think it was</p> <p>17 the year of 2018.</p> <p>18 Q. Okay. Was that --</p> <p>19 A. July -- excuse me -- July of 2018. I do know</p> <p>20 July for sure.</p> <p>21 Q. Okay. So July 2018 you did an internship at</p> <p>22 the Mayo Clinic. Was that in connection with your time</p> <p>23 at Jackson Park Hospital?</p> <p>24 A. No.</p> <p>25 Q. Totally unrelated?</p>	<p style="text-align: right;">31</p> <p>1 to be a doctor. You know, you're -- you're doing notes,</p> <p>2 you're learning how to do notes effectively, you are</p> <p>3 learning how to do your differential diagnoses, all of</p> <p>4 those different things which I --</p> <p>5 Q. Okay.</p> <p>6 A. -- did very well on and got good praises for.</p> <p>7 Q. Okay. And did you get positive feedback from</p> <p>8 patients do you know?</p> <p>9 A. Yes.</p> <p>10 Q. Okay.</p> <p>11 A. I have -- I have been known to have good --</p> <p>12 well, beyond good for one -- with physician/patient</p> <p>13 interaction.</p> <p>14 Q. Okay.</p> <p>15 A. Making sure that they feel heard and, you know,</p> <p>16 treated.</p> <p>17 Q. Okay. So at this point, July 2018, you had</p> <p>18 completed your second year of medical school?</p> <p>19 A. Yes. I -- I was -- I had -- that was my</p> <p>20 first -- yes, that was my second -- yes, end of my</p> <p>21 second year.</p> <p>22 Q. Okay. All right. Other than the Mayo Clinic,</p> <p>23 Brentwood and Jackson Park, did you do clinical</p> <p>24 rotations at any other institutions?</p> <p>25 A. No.</p>
<p style="text-align: right;">30</p> <p>1 A. Completely unrelated.</p> <p>2 Q. Okay.</p> <p>3 A. So every -- every year -- so as a medical</p> <p>4 student at the University of Lublin, you -- during the</p> <p>5 summertime you have to do so many weeks of -- and hours</p> <p>6 of your -- what we would call a clerkship or during the</p> <p>7 summertime so that you're not just forgetting everything</p> <p>8 that you've learned, and so that was one of my -- one of</p> <p>9 my clerkships.</p> <p>10 Q. Okay. And you say that was in family medicine.</p> <p>11 What would you --</p> <p>12 A. Yes.</p> <p>13 Q. -- do as part of that clerkship? Walk us</p> <p>14 through some of the activities you would do as part of</p> <p>15 the clerkship.</p> <p>16 A. Yeah. So basically we would round with the</p> <p>17 physician. We would come in in the morning time and we</p> <p>18 would -- well myself, because no one else there was</p> <p>19 related to my school, and I would round with -- with the</p> <p>20 attending and also with the -- with the residents, the</p> <p>21 Mayo Clinic residents, and working with patients, going</p> <p>22 to seminars that the Mayo Clinic provided every -- every</p> <p>23 week for -- for the residents and any of the high school</p> <p>24 students or medical students who was clerkshipping</p> <p>25 there. And -- and basically throughout the day we had</p>	<p style="text-align: right;">32</p> <p>1 Q. Okay. So you've never done rotations at Johns</p> <p>2 Hopkins or University of Maryland or any other</p> <p>3 schools?</p> <p>4 A. John Hopkins, no. I have never worked at John</p> <p>5 Hopkins or anything like that. Oh, excuse me. Wait a</p> <p>6 second. I did my -- my first clerkship that I did after</p> <p>7 my freshman year of M.D. 1 was with Baptist Health here</p> <p>8 in Richmond.</p> <p>9 Q. Okay.</p> <p>10 A. Sorry about that.</p> <p>11 Q. Baptist Health. And that is somewhere you did</p> <p>12 a clerkship after your first year of medical school and</p> <p>13 that is an institution, a hospital in Richmond,</p> <p>14 Kentucky?</p> <p>15 A. There is pretty big chain here in Kentucky so</p> <p>16 they are everywhere in Kentucky. But yes.</p> <p>17 Q. Okay. And is that a complete list of the</p> <p>18 institutions where you've done rotations or</p> <p>19 internships?</p> <p>20 A. That is a complete list there.</p> <p>21 Q. Okay. And did you get positive feedback from</p> <p>22 all of those rotations?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. When you were in medical school you were</p> <p>25 the president of your medical school class --</p>

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Transcript of Markcus Kitchens, Jr., M.D.

20 (77 to 80)

February 17, 2023

<p style="text-align: right;">77</p> <p>1 A. I don't recall any emails from them. The only 2 thing I do know is that I sent in -- I sent 3 communications in for the accommodations and then I got 4 my -- then I received this. 5 Q. Okay. Did you get any communications from your 6 medical school telling you that they were going to give 7 you permission to test with extra time? 8 A. My medical school -- I think from that email 9 when I sent it to them, I don't recall if I actually got 10 an email back or not from them. Because, again, when I 11 applied for this, I was already stateside whereas the 12 university is in Poland. It was all communicating via 13 email, et cetera. Yeah. 14 Q. Okay. And you were able to coordinate with 15 your university just by email? 16 A. I was able to communicate with them via email 17 for this recommendation, yes. 18 Q. Okay. And it says extended time here. It 19 doesn't say how much extended time. How much extended 20 time did you have on this exam? 21 A. I had 100 percent more time over one -- over 22 one day. 23 Q. Okay. 24 A. I didn't for the -- I just asked for 25 accommodations of extra -- of 100 percent more time and</p>	<p style="text-align: right;">79</p> <p>1 A. This was right before I graduated, Bob. I 2 graduated -- 3 Q. Okay. 4 A. -- in 2021 of January. 5 Q. So at this point you've had all your basic 6 science courses and at this point, you're -- you've 7 learned everything you're going to learn at medical 8 school that will help you take this exam, is that 9 right? 10 A. And I had been also studying consistently for 11 this exam. 12 Q. Okay. And -- 13 A. But one thing I -- but, you know, one thing 14 about this particular -- but, yes. That's it. 15 Q. Okay. 16 A. And we were actually getting ready to move as 17 well because my wife and I both graduated that same time 18 then. 19 Q. Okay. 20 A. And we were getting ready to move from Illinois 21 back down to Kentucky. 22 Q. Okay. And do you recall that when you sent in 23 that Prometric form saying that you had gotten extended 24 time that NBME asked you to send their score report from 25 that test administration?</p>
<p style="text-align: right;">78</p> <p>1 that's what I was given. At the time I didn't even 2 actually know that I could get it over the two days, 3 because if that was the case, I would have done that. 4 Because even if you need more time, if it's an 5 eight-hour exam, if I'm asking for 100 percent, we're 6 looking at 16 hours. How realistic is that? 7 Q. Yeah. 8 A. Not even for the person who's working there. 9 But they did -- one thing I will say is you can see -- 10 ah. You can see they have an exam time there of when 11 they started, but -- so the way it worked -- what I 12 remember specifically is that if you apply for 13 accommodations, I had to wait -- aha, yes, I had to wait 14 before I had to talk with -- I had to -- I applied for 15 it and then I had to talk with someone here in the 16 U.S.A. and the Prometric Center had to find a specific 17 day that I would be able to take the exam because they 18 have to make specific accommodations for who is going to 19 work, who is going to be there that entire day. So it 20 was the entire day of that -- that work shift. 21 Q. Okay. Now, this is December 10th, 2020. At 22 this point you have been in medical school for over 23 three years; is that right? 24 A. For this one here, this was -- 25 Q. In fact four years.</p>	<p style="text-align: right;">80</p> <p>1 A. I don't recall -- I don't remember that. 2 Q. All right. Well let me show you the report 3 that -- I will represent to you that that did happen 4 and -- 5 A. Okay. 6 Q. -- we will see in a minute in emails. But do 7 you recognize this document as the score report from 8 your December 2020 -- 9 A. Was that emailed -- was that emailed to me? I 10 think this is the first time I'm seeing this. 11 Q. Well let's go back. Actually -- 12 A. Did I send that to you? 13 Q. You sent this score report to us. 14 A. I sent this? Bob, are you sure that I sent 15 this to you? 16 Q. Hold on. 17 A. Because I don't think I -- 18 Q. All right. You will see right here, that being 19 said, all medication has been blah, blah, blah. I'm 20 enclosing my documents from my CBSE examination. And 21 you will see here, NBME had contacted you. I apologize 22 here. 23 A. Okay. And that's what I sent to -- 24 Q. You see right this line I have got my cursor 25 on? Please provide a copy of your comprehensive basic</p>

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Transcript of Markcus Kitchens, Jr., M.D.

21 (81 to 84)

February 17, 2023

<p style="text-align: right;">81</p> <p>1 science exam as per your appointment confirmation from</p> <p>2 Prometric that you submitted.</p> <p>3 A. Yes, yes.</p> <p>4 Q. All right.</p> <p>5 A. And -- but if you could scroll back up to that</p> <p>6 particular score there, because --</p> <p>7 Q. I will scroll back.</p> <p>8 A. -- one thing that I want to make clear on, as I</p> <p>9 was saying beforehand about this particular --</p> <p>10 particular score here, as I was saying before, we</p> <p>11 were -- we were just getting ready to graduate and we</p> <p>12 was also in the point of moving, and for this particular</p> <p>13 exam, even though I went in and took the CBSE</p> <p>14 examination, I can take this exam as many times as I</p> <p>15 want to and I know that. It has an unlimited amount of</p> <p>16 chance. We had family, everybody was there helping us</p> <p>17 pack up and move, I knew this score was going to be bad</p> <p>18 anyway, and so the importance of that exam, even though</p> <p>19 I was studying for it, does not accurately reflect my</p> <p>20 level of knowledge or expertise in certain areas by this</p> <p>21 particular examination. So I'm glad you brought that</p> <p>22 up.</p> <p>23 Q. All right. Because by this point you just told</p> <p>24 me you were studying a lot, you had taken all of your</p> <p>25 medical school classes, and this is an exam that will</p>	<p style="text-align: right;">83</p> <p>1 chance, yes, I do.</p> <p>2 Q. Okay.</p> <p>3 A. I can read that, yes.</p> <p>4 Q. Okay.</p> <p>5 A. But it was also in their same argument that</p> <p>6 they said that it's likely but it doesn't mean that's</p> <p>7 what you are going to get. So thank you. Yeah.</p> <p>8 Q. All right. So in all events, the bottom line</p> <p>9 is when you took this exam, having concluded all of your</p> <p>10 medical school programs and having studied a lot for the</p> <p>11 exam, you scored a 156 and the minimum passing score on</p> <p>12 STEP 1 at that time was 194?</p> <p>13 A. And, again, we have to understand that there</p> <p>14 was different variables that was in place that I even --</p> <p>15 what I just mentioned before. I knew that I could take</p> <p>16 this exam 1,001, times and it doesn't reflect anything</p> <p>17 on my medical transcript, with my university, with my</p> <p>18 residency program. I had family and such that was in</p> <p>19 town. I went in there because I just took -- I paid the</p> <p>20 money so I could hurry up and take the examination and</p> <p>21 then also get back to my family so that we can move me</p> <p>22 across the country the very next day.</p> <p>23 Q. Okay. You obviously took it seriously because</p> <p>24 you were studying hard and you went to the trouble to</p> <p>25 get extra testing time, so you are not suggesting that</p>
<p style="text-align: right;">82</p> <p>1 give you a sense of how you're going to perform on STEP</p> <p>2 1; isn't that right, Marcus?</p> <p>3 A. No, it is not correct, Bob. This particular</p> <p>4 examination, and it's even on your website saying that</p> <p>5 this is not a score that is indicative to how you will</p> <p>6 perform on the USMLE.</p> <p>7 This particular exam also, Bob, is</p> <p>8 completely -- even though they may be what they -- I</p> <p>9 think people said they were -- they were written by NBME</p> <p>10 or they were like retired questions or something like</p> <p>11 this, I don't know how true that is, but they are not</p> <p>12 as -- I don't know if you have ever seen a sample of the</p> <p>13 CBSE or of the -- or of the average -- or of the USMLE</p> <p>14 STEP 1 and STEP 2 examinations. It is a completely</p> <p>15 longer question being asked on the USMLE than it is on</p> <p>16 the CBSE. And, yes, it might be a margin, but even when</p> <p>17 I -- when I spoke with the NBME, they even affirmed that</p> <p>18 it does not give a indication of what you would score on</p> <p>19 your exam because there are so many --</p> <p>20 Q. All right.</p> <p>21 A. -- other variants that can be in play there.</p> <p>22 Q. Okay. I mean you see what I inartfully</p> <p>23 highlighted here where it says, this will give you a</p> <p>24 sense of your likely performance on STEP 1?</p> <p>25 A. Right. So it would give a sense of my likely</p>	<p style="text-align: right;">84</p> <p>1 you didn't approach this seriously, are you?</p> <p>2 A. I'm -- what I'm saying to you -- even though I</p> <p>3 have studied hard, Bob --</p> <p>4 Q. Yeah.</p> <p>5 A. -- as I mentioned before, I had other pressures</p> <p>6 that -- pressures that were there and so those things</p> <p>7 were more important than me sitting down for this exam</p> <p>8 because, again, I know that this has nothing to do with</p> <p>9 my medical transcript at all. This was only for my</p> <p>10 benefit to see. And I could also do this at home as</p> <p>11 well.</p> <p>12 Q. Okay.</p> <p>13 A. The price doesn't change.</p> <p>14 Q. Did you take any other subject matter exams at</p> <p>15 Prometric Centers?</p> <p>16 A. Like in the past or like in general?</p> <p>17 Q. Yeah, in general.</p> <p>18 A. Oh, yes. Yes. In general, yes. My MCAT was</p> <p>19 at -- both times was at the --</p> <p>20 Q. I'm sorry, Marcus. I mean subject matter</p> <p>21 exams like the CBSE, any similar exams like that, shelf</p> <p>22 exams?</p> <p>23 A. No, we didn't have to -- some schools require</p> <p>24 those shelf exams, some schools do not. To my</p> <p>25 recollection, I don't remember taking another one</p>

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<p style="text-align: right;">97</p> <p>1 Q. Okay. All right. And then you say, "I'm not 2 sure why all of these steps are necessary if I provided 3 NBME with legal documentation from my physician" alone, 4 and I think you meant "along, with medication lists 5 dating back over four-and-a-half years concerning my 6 disabilities. As a U.S. citizen this seems to be 7 completely unjust and prejudice to us with disabilities 8 to go through such a task in order to have a fair chance 9 at the exams." 10 And is this a note you prepared, Marcus? 11 A. Yes, this is a note that I did prepare. All 12 emails is what -- that we have in exchange to from this 13 board on were sent by me. Um -- um, one thing I will 14 say is absolutely that is -- that is -- I think you've 15 spoken with me a lot, even on this call, that is exactly 16 the way I feel. That should be just. That I know if it 17 was me as a physician and a patient came to me and told 18 me about a diagnosis that they have had or a treatment 19 that they have been given and I decide that, no, I'm not 20 going to treat them with that because, you know, they 21 didn't show me enough information and then something 22 happens to that patient, I'm liable to be sued and lose 23 my license. So, no, I don't think that having all of 24 these particular documents that they -- like specific 25 documents, excuse me, and the details of those documents</p>	<p style="text-align: right;">99</p> <p>1 as a person who is applying for a thousand dollar 2 medical exam for STEP 1, which is a thousand dollars for 3 me but half of that is for someone who went into the 4 United States, a school in the U.S., that's now more 5 money that I'm trying to find, and if you don't have it 6 at that point and you have other documentation that is 7 stating that you have this particular diagnosis and that 8 you have had it before, it makes it very hard to justify 9 spending almost \$1300 to do that. I mean, from a -- 10 from a person to person, I mean that makes a lot of 11 sense to me. 12 Q. Yeah. Well we will look -- we will also look 13 at other documentation you've provided to the court 14 but -- 15 A. Well -- 16 Q. -- that you didn't provide to NBME at the time 17 you submitted your request. And I'll show that to you. 18 A. The only thing is -- the only thing is about 19 the other documentation that you -- that I -- you know, 20 I can think of is maybe even the affidavit or -- or 21 whatnot would be for my professors or whatnot for the 22 unofficial transcript -- I mean for the unofficial 23 accommodations. But again, at that time I didn't think 24 that that would even be acceptable if it wasn't written 25 down on a paper until after I started doing so much</p>
<p style="text-align: right;">98</p> <p>1 is necessary. 2 Q. Okay. 3 A. But I provided what I could that was relevant 4 that was -- 5 Q. Yeah. 6 A. -- what they was wanting to the best of my 7 ability. 8 Q. Okay. Well you have since come up and obtained 9 a lot of the documentation that they requested at that 10 time, haven't you? Haven't you over the course of the 11 last two months come up with additional medical 12 documentation, statements from professors, those kinds 13 of things, the type of documentation they asked you to 14 provide on the front end? 15 A. Right. So when -- when -- when we talk about 16 documentation that I've had now, as we talked about 17 before when we talk about the evaluation, Bob, that's 18 been -- I've already explained, you know, I tried to 19 look for different providers. I have to find providers 20 that is going to be inside of my network for my 21 insurance. And then when I notice that, you know, 22 everyone is turning it down, I have to now figure out 23 how I'm going to pay for an evaluation. I don't know if 24 you know this or not, but the average going for an 25 evaluation for ADHD is \$1300. So as a -- as a student,</p>	<p style="text-align: right;">100</p> <p>1 research and knowing even more about my rights. 2 Q. Okay. 3 A. So that was out of ignorance of not knowing. 4 Q. Okay. Marcus, you went to the NBME website, 5 didn't you, and you reviewed their guidelines for 6 requesting accommodations? 7 A. It's been so long ago. I know that I went to 8 their website and looked for the PDF form, downloaded 9 it, and filled it out. 10 Q. Okay. And did you review the guidelines for 11 the type of documentation you should submit? 12 A. I just honestly filled out the form that was on 13 there to the best of my ability and to send in proof 14 that they were -- that they were asking from that form, 15 I guess, and that's what I was doing. But even by going 16 with the guidelines on -- for the application there, 17 again, I submitted everything that I could that was 18 relevant and that was close to what they were asking 19 for. 20 Q. Okay. Well, I appreciate all of that. I don't 21 want to -- I don't want to cut off your answer, but the 22 question is basically a straightforward yes or no, did 23 you review the guidelines that NBME has posted on its 24 website that tell examinees how to apply for 25 accommodations?</p>

Transcript of Markcus Kitchens, Jr., M.D.

26 (101 to 104)

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<p>101</p> <p>1 A. I don't recall, Bob.</p> <p>2 Q. Okay. All right. And what is here is these</p> <p>3 are just repeat emails that get folded into the next</p> <p>4 one.</p> <p>5 All right. Here is you thanking Alyssa for her</p> <p>6 feedback.</p> <p>7 A. Yes. I mean, I'm not --</p> <p>8 Q. A voicemail message just checking on the</p> <p>9 status.</p> <p>10 A. That sounds like me.</p> <p>11 Q. Said it was in process. You asked for a status</p> <p>12 update.</p> <p>13 A. What was those dates, Bob, on when I called in</p> <p>14 for a status update?</p> <p>15 Q. Here's one on February 1st.</p> <p>16 A. That sounds about why I probably emailed them</p> <p>17 on the 5th.</p> <p>18 Q. Who did you email on the 5th?</p> <p>19 A. What -- you just said that I sent in certain</p> <p>20 documents on the 5th, but I called -- you said that I</p> <p>21 called in on the 1st asking for a checkup?</p> <p>22 Q. These are all just sequential.</p> <p>23 A. Right.</p> <p>24 Q. So this is January 18th you left a voicemail</p> <p>25 asking about status.</p>	<p>103</p> <p>1 that decision has been made, and that's on February 9th,</p> <p>2 2022, last page of Exhibit MK-2.</p> <p>3 Do you see that where they are telling you --</p> <p>4 A. Yes.</p> <p>5 Q. -- here's your decision letter?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And that decision letter denied your</p> <p>8 request for accommodations; is that right?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. All right. Let's go, Marcus, to --</p> <p>11 and, Malcolm, if you could pull up MK-22.</p> <p>12 IT TECHNICIAN: All right. That should be on</p> <p>13 screen now.</p> <p>14 (Whereupon, Kitchens Exhibit MK-22 was marked for</p> <p>15 identification.)</p> <p>16 MR. BURGOYNE: Perfect. Am I able to</p> <p>17 control -- good.</p> <p>18 By MR. BURGOYNE:</p> <p>19 Q. All right. Marcus, I'll represent to you that</p> <p>20 Exhibit MK-22 is a multi-page document which contains</p> <p>21 screenshots found on the USMLE website that tells</p> <p>22 examinees how to apply for accommodations and the</p> <p>23 specific type of documentation they should provide.</p> <p>24 Looking at this now, is this something you've reviewed</p> <p>25 previously in connection with your request for</p>
<p>102</p> <p>1 A. Right. And that's what I was trying to explain</p> <p>2 earlier because you were asking me why I would have sent</p> <p>3 in those documents on the 5th of February, and that is</p> <p>4 when I telling you I possibly called into them and they</p> <p>5 asked for the status, they called me back possibly, I</p> <p>6 don't know.</p> <p>7 Q. Okay.</p> <p>8 A. But that sounds plausible.</p> <p>9 Q. Now, the date that you're referring to, you are</p> <p>10 referring to February, I think you mean January 5th</p> <p>11 which was the date of the first email which we looked at</p> <p>12 and which is the email which you attached your</p> <p>13 accommodations request form to.</p> <p>14 A. That was January 5th or February 5th?</p> <p>15 Q. That is January 5th.</p> <p>16 A. You could be correct, I just -- yes, okay.</p> <p>17 Thank you.</p> <p>18 Q. All right.</p> <p>19 A. Yes, sir.</p> <p>20 Q. So January 5th you send in your documentation,</p> <p>21 it's the first record NBME has of getting anything from</p> <p>22 you in writing. At this point we are now into February.</p> <p>23 You're asking about the status of your request, and you</p> <p>24 eventually get a -- you are asking here again the</p> <p>25 status, and then you get an email from them telling you</p>	<p>104</p> <p>1 accommodations on the STEP exams?</p> <p>2 A. I don't recall.</p> <p>3 Q. Okay. Do you see here where it asks candidates</p> <p>4 to review the guidelines carefully? You don't recall</p> <p>5 whether you reviewed them at all?</p> <p>6 A. No, I do not recall.</p> <p>7 Q. Okay.</p> <p>8 A. I do know that I went to the website and I</p> <p>9 hit -- looked for the form and filled out the form,</p> <p>10 yes.</p> <p>11 Q. Have you seen this form before? This is the</p> <p>12 form that was referenced on the form that you completed</p> <p>13 that NBME asks candidates to submit from their medical</p> <p>14 schools confirming if the student had received any</p> <p>15 accommodations?</p> <p>16 A. It does not look familiar to me.</p> <p>17 Q. Okay. So you don't recall ever clicking on</p> <p>18 this and thinking about whether you should submit this</p> <p>19 to your medical school?</p> <p>20 A. No. That does not look familiar to me at</p> <p>21 all.</p> <p>22 Q. All right. All right. Here are the specific</p> <p>23 guidelines on how to request accommodations. Is this</p> <p>24 something else that you don't recall ever seeing?</p> <p>25 A. Is this something else that I don't recall?</p>

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<p style="text-align: right;">149</p> <p>1 when we were -- or Cynthia Reed, I don't remember 2 specifically right now, and we were talking about the 3 medication earlier, yes -- 4 Q. Correct. 5 A. -- that would have fell upon those 6 accommodations. 7 Q. Okay. But they said you weren't looking for 8 accommodations, you were looking for medications; isn't 9 that right? 10 A. Again, their recommendation was that I have the 11 accommodations. But, again, I did say that I didn't 12 want the official accommodations for the very reasons 13 that I've explained. 14 Q. Okay. All right. So in all events, you did 15 not receive extended time on all of the examinations 16 that you took at Berea College. 17 A. Any exam that I would have -- that I wanted to 18 request for that I felt the need that I needed the 19 request for, yes, I did. 20 Q. Okay. On paragraph 22 you state that you were 21 accepted to the Medical University of Lublin in Poland 22 in October -- on October 2015; correct? 23 A. Yes. 24 Q. All right. And then in the next paragraph you 25 say, "At all times during classroom teaching</p>	<p style="text-align: right;">151</p> <p>1 now, just to be clear, you are saying this doesn't refer 2 to medical school? 3 A. No, that does not refer to the medical school. 4 What -- for -- for medical school it was different. If 5 I did need more time, those particular professors were 6 more open to those who had to do retakes there so... 7 Q. Okay. It looks like at page 8 -- this is the 8 verification and you signed this declaration and you 9 said everything in it was true and accurate to the best 10 of your knowledge and belief. Is that your signature? 11 A. That is. Everything in there is true to the 12 best of my knowledge and my belief. 13 Q. Okay. And it was notarized by Amelia Kitchens. 14 Is that your wife? 15 A. Yes. 16 Q. Okay. All right. Let's go to MK-6, which is 17 the affidavit of Alyssa Hanna. 18 (Whereupon, Kitchens Exhibit MK-6 was marked for 19 identification.) 20 THE WITNESS: I did want to make note, Bob, 21 that I still have not received any of these documents in 22 the mail. 23 MR. BURGOYNE: Yeah, I apologize. I can't 24 control Federal Express and I have not gotten an answer 25 from my office services as to why that document didn't</p>
<p style="text-align: right;">150</p> <p>1 Dr. Kitchens received testing accommodations of time 2 plus 100 percent during examinations." Now that's the 3 paragraph right after you are referring to medical 4 school. Are you saying in this paragraph that you 5 received 100 percent extra testing time on all of the 6 exams you took in medical school? 7 A. No, that's not -- that's not what I was 8 referring to there. What I was referring to in this 9 particular instance was more so with my undergraduate. 10 Q. Okay. So is this just a repetition of what you 11 said in the paragraph we just looked at? 12 A. I wouldn't say that it was a repetition of it, 13 but I would say that this statement is true. 14 Q. Okay. 20 says -- 20 actually addresses your 15 undergraduate testing and you say there that you got 16 extended time on all examinations administered, and 17 you've explained what you meant by that was, if you 18 asked for it, you got it. Is that an accurate 19 description? 20 A. Yes. 21 Q. Okay. And then you transition and you start 22 talking about going to medical school and in paragraphs 23 22 and 23 you talk about your medical school experience. 24 Then we go to 24 and you say, "At all times during 25 classroom teaching you got extended time on exams." And</p>	<p style="text-align: right;">152</p> <p>1 get delivered as promised. My apologies. I'm glad we 2 have them online like this. And I don't know why you 3 didn't receive the email version that I sent either, but 4 separate question. 5 By MR. BURGOYNE: 6 Q. This is an affidavit of Alyssa Hanna. Who is 7 Alyssa Hanna? 8 A. Dr. Alyssa Hanna was one of my biology 9 professors. I had her for two different courses 10 actually. Biology -- modern biology and also my botany 11 professor at Berea College. And she was one of the 12 professors that noticed, actually, me struggling in 13 class. Before I even asked for accommodations or extra 14 time, she actually came to me because she stated to me 15 that, Marcus, you know the information, but your exam 16 score does not reflect the knowledge that I know that 17 you have because your interest in the course and the 18 topics are very keen, you are always active in class, et 19 cetera. And so what she allowed for me to do and what 20 she suggested was to have -- do all of my exams 21 one-on-one in her office and I took as much time as I 22 needed to take those exams and I did just fine. 23 Q. Okay. Does she live in Berea? 24 A. No, she does not. 25 Q. Where does she live?</p>

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<p style="text-align: right;">153</p> <p>1 A. I think it's Virginia. It's probably at the 2 bottom somewhere in here. I think -- I put her address 3 on there I think. But it was -- it's either Virginia or 4 West Virginia, one of the two. 5 Q. Okay. Did you call her -- 6 A. But I had her -- 7 Q. Did you call her up and ask her to provide this 8 affidavit? 9 A. Yes, I did. 10 Q. And who drafted the affidavit? 11 A. I did. All work done for this law case, I did 12 the work. 13 Q. Okay. And had you or your wife spoken to 14 Dr. Hanna at any point after you graduated from college 15 and before getting this affidavit? 16 A. My wife doesn't know Dr. Hanna. I didn't even 17 know my wife at the time. And my wife has never even 18 met her or even spoken to Dr. Alyssa Hanna. 19 Q. Well I hope she has spoken to her because she 20 is the affiant on her, she signed -- 21 A. Well -- well, no. Well, no, not in -- I'm 22 saying -- I think, 'cuz see, I guess -- and I apologize 23 for that. I would like to that clarify that for -- for 24 the record, is that she -- because when we are asking 25 who types these things up and knowing that my wife is a</p>	<p style="text-align: right;">155</p> <p>1 percent extra testing time and that would have been, 2 what, 12, 13 years ago? 3 A. Can you scroll to that number on the document, 4 please. 5 Q. Yeah. Sorry. My fault. 6 A. That is okay. 7 Q. All right. So 2010 and 2011 you had classes 8 with her and she reports that you were given 100 percent 9 extra testing time? 10 A. Yes. 11 Q. All right. 12 A. She -- I had as much time as I needed to take 13 the exam. 14 Q. Okay. Where did this 100 percent figure come 15 up? Did you give that information to her in connection 16 with preparing the affidavit? 17 A. Well, I would say that the 100 percent time 18 is -- the reason that we put that number there is 19 because we can't actually say, well, I gave him 25 20 percent or I gave him 50 percent or 100 percent when the 21 matter was that she allowed me to take that exam until I 22 finished it. So 100 percent made more accurate 23 description of the time I had to take the exam. 24 Q. Okay. And it just happens to be the amount of 25 time you're seeking on the STEP 1 exam?</p>
<p style="text-align: right;">154</p> <p>1 lawyer, it kind of gives me the sense that we feel that 2 someone else did the work for me and so I want it to be 3 known that I've done that work, but my wife did speak 4 with her when having her sign these documents. 5 Q. Okay. 6 A. So, yeah, I did the work. 7 Q. Why is she referred to as doctor? What's the 8 degree that she has that causes her to be a doctor? 9 A. She has her Ph.D. 10 Q. She has a Ph.D? 11 And when you submitted accommodation requests 12 to the National Board of Medical Examiners in 2022, did 13 you submit any documentation from Dr. Hanna at that 14 time? 15 A. No. I learned about doing affidavits and those 16 things from this lawsuit. Again, I did a lot of 17 research and that's one thing that I saw that because, 18 again, as I said at the beginning, I didn't really know 19 to submit those things because it was unofficial but -- 20 Q. All right. 21 A. -- since it did happen I wanted to get her her 22 affidavit to say that, yes, I agree to these things, 23 that Dr. Kitchens did receive these statements that I -- 24 you know, these accommodations that I gave him. 25 Q. Okay. She says in here that you were given 100</p>	<p style="text-align: right;">156</p> <p>1 A. Again, the reason that is there is because I 2 had all the time that I needed to take it. 3 Q. Have you contacted anyone else from Berea about 4 providing any documentation to you regarding your 5 accommodations? 6 A. Yes, I have actually. I have not -- I heard 7 back from one other professor but they have yet to read 8 the affidavit or been obliged to be able to meet so that 9 we can sign it. So that's why I didn't provide it. 10 Q. Okay. Let's look at MK-7, please, which is 11 your motion for preliminary injunction. 12 (Whereupon, Kitchens Exhibit MK-7 was marked for 13 identification.) 14 By MR. BURGOYNE: 15 Q. And again I'll just ask you the same question, 16 and I won't repeat it after this, but is this a document 17 that you prepared? 18 A. Yes. 19 Q. Okay. And likewise, it's a document that to 20 the extent it reflects legal research, it reflects legal 21 research that you did? 22 A. Yes. 23 Q. Let me just make sure, Markcus, that I 24 understand. On page 2 of this document, which is your 25 motion for a preliminary injunction, you explained to</p>

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<p>157</p> <p>1 the court why it is you think you need emergency</p> <p>2 relief -- injunctive relief and you discuss the</p> <p>3 irreparable harm that you say you're going to suffer?</p> <p>4 A. Okay. Yes.</p> <p>5 Q. All right. And it says here you can't enroll</p> <p>6 in the match until you take and pass STEP 1 and STEP 2</p> <p>7 and that you have to do that by April 16th.</p> <p>8 A. That is a typo.</p> <p>9 Q. Okay. What should that date be?</p> <p>10 A. That should be April 12th. I -- again, I</p> <p>11 looked at that number wrong. According to the NBME's</p> <p>12 website on the 13th of April is when they actually start</p> <p>13 doing the delayed gradings score reports so up until</p> <p>14 June the 18th I think it was and so they suggest doing</p> <p>15 it before April 12th.</p> <p>16 Q. Okay.</p> <p>17 A. On or before April 12th, which I discussed.</p> <p>18 Q. All right.</p> <p>19 A. So...</p> <p>20 Q. And here you refer to the 2023 NRMP. Is that a</p> <p>21 reference to the 2023 match program that the NRMP</p> <p>22 conducts?</p> <p>23 A. Yes.</p> <p>24 Q. Right here?</p> <p>25 A. Yes. Exactly.</p>	<p>159</p> <p>1 more, because of this. So, yes, it is definitely -- the</p> <p>2 irreparable harm will follow me forever. That --</p> <p>3 Q. I'm just trying, Markcus -- I apologize. All</p> <p>4 those points you just made are fine, I don't want to cut</p> <p>5 you off from making them, you've made them in your</p> <p>6 papers. I'm just trying to make sure we have a clean,</p> <p>7 concise answer as to what it is that requires the court</p> <p>8 to conduct an emergency proceeding in order to decide</p> <p>9 your preliminary injunction motion. What is it that</p> <p>10 you're trying to make sure happens, and what you are</p> <p>11 saying is you are going to suffer irreparable harm if</p> <p>12 you cannot participate in the 2023 match program; is</p> <p>13 that correct?</p> <p>14 A. This is correct. This is part of this, yes.</p> <p>15 Q. Okay. And the match program is conducted every</p> <p>16 year so there will be a 2024 match as well?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. All right. Let's look at MK-8.</p> <p>19 (Whereupon, Kitchens Exhibit MK-8 was marked for</p> <p>20 identification.)</p> <p>21 By MR. BURGOYNE:</p> <p>22 Q. And this is your legal memorandum in support of</p> <p>23 the preliminary injunction motion. And is this a</p> <p>24 document that you also researched, prepared, and typed</p> <p>25 up?</p>
<p>158</p> <p>1 Q. Okay. So to be sure we are clear, the</p> <p>2 irreparable harm you claim that you are going to suffer</p> <p>3 if you can't take STEP 1 and STEP 2 CK by April 12th is</p> <p>4 your inability to participate in the 2023 NRMP match?</p> <p>5 A. That's -- that's just the tip of the iceberg,</p> <p>6 Bob. So being able -- that's just another tool that I</p> <p>7 have to go through. But the irreparable harm that comes</p> <p>8 along with this is the delay, the delay of being</p> <p>9 outside. It has now been -- will be two years. If I</p> <p>10 don't participate in this -- this match season this</p> <p>11 year, it will be two years I will have been out of</p> <p>12 medical school two years not practicing medicine</p> <p>13 efficiently in the hospital which dramatically decreases</p> <p>14 my -- my chances of matching ever.</p> <p>15 And not only that, it also -- being able to</p> <p>16 take those exams by a certain time would also show that</p> <p>17 there would be a decrease also in duration or my stamina</p> <p>18 -- stamina to be able to continue to -- to study for</p> <p>19 these things.</p> <p>20 Not only that, but this -- these particular</p> <p>21 scores that I have, especially with my expungement of my</p> <p>22 records, is that they will follow me forever. I would</p> <p>23 not be able to -- to practice in certain states. I</p> <p>24 won't be able to -- to even practice or even apply to</p> <p>25 over 20 plus residency -- 20 plus programs, if not even</p>	<p>160</p> <p>1 A. Bob, you said you weren't going to ask me that</p> <p>2 again. But yes.</p> <p>3 Q. Okay. That is the last time I'll ask you.</p> <p>4 A. I don't believe it at this point.</p> <p>5 Q. I don't blame you.</p> <p>6 A. Yes. Is that something that you ask all</p> <p>7 plaintiffs that are -- or is it because of the quality</p> <p>8 of the document?</p> <p>9 Q. The quality is good. You know, the occasional</p> <p>10 typo, but yeah, no, the quality is good.</p> <p>11 A. Yeah, because I -- I just wanted to know if</p> <p>12 that was something you ask all, you know, pro se</p> <p>13 plaintiffs if they did that.</p> <p>14 Q. Yeah.</p> <p>15 A. So that's a yes. Okay.</p> <p>16 Q. Yeah. I ask -- if there are other pro se</p> <p>17 plaintiffs I will ask them similar questions, yes.</p> <p>18 All right. Let's look at page 2 of this</p> <p>19 document. Let me get this a little smaller.</p> <p>20 All right. On the background session, Markcus,</p> <p>21 you see where the hand is here?</p> <p>22 A. Can you zoom in, please.</p> <p>23 Q. At the age of seven he was evaluated by his</p> <p>24 pediatrician -- I will zoom in for you.</p> <p>25 A. Yes. Yes, I'm familiar what you're -- where</p>

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<p>173</p> <p>1 Q. Okay. Let's look -- now let's go back to MK-8, 2 and let's look -- all right. 3 We talked earlier, Marcus, and you said there 4 was a typo and that what you had to do was take the STEP 5 exams prior to April 12th. This document it looks like 6 you're saying you got to take the STEP exams by March 7 6th. What is the significance of March 6th date? 8 A. And this is the same exact document that we had 9 above? 10 Q. Your other document I think was your Complaint, 11 your Amended Complaint. 12 A. Right. And -- and -- and which particular 13 document is this? 14 Q. This is the memorandum in support of your 15 motion for a preliminary injunction? 16 A. Okay. Well then that should be -- that is a 17 typo there. 18 Q. I apologize. The other document was the motion 19 for a preliminary injunction. That's the one where you 20 said April 12th. 21 A. Yes. 22 Q. And this is your memorandum -- this is your 23 memorandum of law in support of your motion and it says 24 you have to take the exams by March 6th. So what is the 25 correct day by which you think you need to take the step</p>	<p>175</p> <p>1 little bit. Yes, that is Tina. That is Tina. Excuse 2 me. 3 Q. Okay. So Tina is the one who administered the 4 Conners CPT 3 to you? 5 A. Yes. 6 Q. All right. And then you refer here to her 7 stating something in her affidavit. Do you see the 8 reference here in the second line to her affidavit? 9 A. Yes. 10 Q. Okay. Let's go to that Exhibit E if -- 11 Malcolm, if you can push up -- pull up MK-23? 12 A. It should be the Conners, yes. 13 (Whereupon, Kitchens Exhibit MK-23 was marked for 14 identification.) 15 By MR. BURGOYNE: 16 Q. Okay. So this is what exhibit -- you know, you 17 refer to Exhibit E there. You will see this document 18 has Exhibit E on it? 19 A. Yes. 20 Q. And you'll agree with me, this is not an 21 affidavit? 22 A. Sorry. That is a typo then. 23 Q. Well I just wondered, did she prepare an 24 affidavit at any point? 25 A. No, I did not provide an affidavit for Tina.</p>
<p>174</p> <p>1 exams? 2 A. The correct date is April 12th. 3 Q. Okay. 4 A. That is a typo on my end. Thank you. 5 Q. And it's your understanding you need to take 6 both STEP 1 and STEP 2 CK prior to April 12th? 7 A. Yes. 8 Q. Okay. Are there any other exams that you have 9 to take in order to participate in the 2023 match other 10 than the two STEP exams? 11 A. No. 12 Q. Marcus, in this part of your brief you start 13 discussing someone named Mrs. Holbrook and you refer to 14 the honors continuous performance test, third edition? 15 A. Uh-huh. 16 Q. Who is Mrs. Holbrook? 17 A. She is a psychologist who did my evaluation and 18 who -- that she -- yes, she did my -- my evaluation. 19 Q. I see you refer to her as Mrs. Is she a 20 psychologist or is she something else? You refer to her 21 as nurse practitioner actually. 22 A. No. Nurse practitioner, that was Tina, that is 23 my other -- that is my actual psychiatrist nurse 24 practitioner. That is Tina. Oh, wait. Yes, that is -- 25 yes, that is Tina. Wow. Sorry. I'm checking out a</p>	<p>176</p> <p>1 Q. Okay. 2 A. One man show here, Bob. Sorry. 3 Q. That is all right. I just want to make sure. 4 A. Yes, sir. I appreciate that. 5 Q. I want to make sure because your document says 6 you were giving the court an affidavit and there was 7 none there. All right? 8 Where was this CPT assessment administered? 9 A. It was administered at Baptist Health 10 Hospital. 11 Q. Okay. And how long did it take for you to take 12 this assessment? 13 A. I think the assessment was about 30 minutes. 14 Q. Okay. And this was February 3rd, 2023? 15 A. Yes. 16 Q. And this was before you went and had the 17 evaluation with Dr. Bacon? 18 A. Yes. 19 Q. Okay. All right. Now let's go back to MK-8. 20 And in the same paragraph here you state that 21 "Mrs. Holbrook tested him using accepted standard 22 testing instruments and applied generally accepted 23 diagnostic standards to diagnose Dr. Kitchens' reading 24 and attention disabilities." 25 A. Yes, I --</p>

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<p>189</p> <p>1 And were you able to read any of those other questions, 2 that other 120 questions, were you able to read those 3 questions? 4 A. I would say to some degree I was able to -- to 5 look at those. 6 Q. Okay. Well so would it be accurate to say you 7 were able to read to some degree all 320 questions? 8 A. I wouldn't say all 200 -- all 320 questions, 9 Bob. What I would say is that out of the 320 questions, 10 200 of them I know for a fact that I was able to -- to 11 read for sure at some degree. I think that would be 12 accurate to say. 13 Q. Okay. And how would you describe the extent to 14 which you were able to read the other 120 questions? 15 A. I would have to -- I would have to either -- if 16 I didn't -- wasn't -- had time to read over it, I would 17 have to pick an answer choice, whether it was C or 18 something that I looked in there and -- and felt that, 19 you know, it was probably not the right answer if I 20 didn't think it was C that I had never heard of 21 before. 22 Q. Okay. But to what extent were you able to read 23 those other questions? I know -- I understand what 24 you're saying about -- 25 A. Very limited.</p>	<p>191</p> <p>1 clerkship or internship? 2 A. Correct. 3 Q. Okay. How is everybody holding up? Do you 4 want to take one more break or do you want to plug 5 through it? 6 A. How much time do you expect, Bob, from here? 7 It's five o'clock. 8 Q. I hope to be done by 5:30? 9 A. That sounds good to me. I would like to take a 10 break. I actually need one. 11 Q. Okay. Let's take a quick break. Five minutes 12 we'll be back. 13 A. Thank you. 14 (Recess.) 15 MR. BURGOYNE: All right. Let's finish up 16 here. Let's look at MK-10, please. 17 (Whereupon, Kitchens Exhibit MK-10 was marked for 18 identification.) 19 By MR. BURGOYNE: 20 Q. And this is a supplemental filing you made, 21 Markcus, and you'll see it is the additional evaluation 22 report that you obtained. And this was a report you 23 obtained on February 7th; is that correct? 24 A. Correct. 25 Q. And you obtained this from Peace of Mind</p>
<p>190</p> <p>1 Q. Very limited, okay. 2 A. I'm sorry, Brooke. 3 Q. Paragraph 53 you're discussing your clinical 4 rotations and you say all of those were completed at 5 Jackson Park Hospital in Brentwood. But I think this 6 morning you referenced -- or earlier today you 7 referenced Mayo and Baptist Health? 8 A. So there is a difference between clinical 9 rotations and clerkships. 10 Q. Okay. 11 A. Clerkships is during the summertime that we -- 12 that we said was required doing between the summers of 13 your first year and after your second year. The reason 14 being is so that you start to get those clinical 15 experience. When you are in your third year and going 16 into your fourth year, that is no longer required 17 because you are in a hospital all of the time anyway so 18 that is why it's not considered part of a clinical 19 rotation per my official transcript. 20 Q. Okay. So -- so whatever you did at Mayo you 21 would describe as a clerkship? 22 A. Right. So like an internship. 23 Q. Okay. 24 A. Yes. 25 Q. And the same at Baptist Health, that was also a</p>	<p>192</p> <p>1 Counseling and from someone named Christina Bacon who -- 2 A. Yes. 3 Q. -- is a licensed -- what is her title, LPP? 4 A. Yes, that's -- yes, that's Dr. Bacon there. 5 Q. Okay. All right. And she refers here to 6 having done a record review. What records did you take 7 to her to review? 8 A. The records that you guys have. 9 Q. Okay. The ones you submitted in support of 10 your accommodation request? 11 A. Yes. 12 Q. Okay. And did you also give her the records 13 from 2013 from Berea College? 14 A. All -- all records pertaining to my ADHD I sent 15 to her. 16 Q. Okay. And in fact, was this something you did 17 remotely similar to the way we are doing this 18 deposition? 19 A. Right. Yes, I did. 20 Q. And it looks like there was an intake interview 21 on the 7th and then testing was done on the 8th. Were 22 both of those sessions remotely? 23 A. Yes. It was the only way that she would be 24 able to -- to get me into her schedule. 25 Q. Okay.</p>

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<p>197</p> <p>1 Q. Okay. All right. And you asked them to give</p> <p>2 you all the documents they had that reflected treatment</p> <p>3 plans, initial evaluations, and progress notes?</p> <p>4 A. Yes, sir. And all of that information, Bob,</p> <p>5 nothing changed, just because of the time frame that I</p> <p>6 haven't been to that -- to that particular hospital in</p> <p>7 years. But I was trying to find the, you know, the</p> <p>8 documentation of who that therapist was in Lexington and</p> <p>9 still could not find it.</p> <p>10 Q. Okay. And we don't need to go through it, but</p> <p>11 the documents that follow this page, is that a complete</p> <p>12 set of all the medical records you obtained from White</p> <p>13 House Clinic?</p> <p>14 A. If you can -- I -- I don't want to say that it</p> <p>15 is or it isn't without seeing first.</p> <p>16 Q. Okay. I'll show them to you. Here's just a</p> <p>17 vaccine information.</p> <p>18 A. If it's vaccine then it probably is</p> <p>19 everything.</p> <p>20 Q. Then here is a chart where you --</p> <p>21 A. Yes, that should be everything then because</p> <p>22 that's when I was -- keep going.</p> <p>23 Q. This is when -- this is when you actually came</p> <p>24 in to discuss the service dog?</p> <p>25 A. I think that might be everything.</p>	<p>199</p> <p>1 she declined.</p> <p>2 Q. Okay. Do you know if your pediatrician is</p> <p>3 still alive and practicing, the one you discuss here in</p> <p>4 paragraph 10?</p> <p>5 A. They have long so retired.</p> <p>6 Q. Okay.</p> <p>7 A. Yes. Dr. -- Dr. -- because that was my</p> <p>8 physician. He actually delivered me so...</p> <p>9 Q. Okay.</p> <p>10 A. And he and his wife were both physicians. They</p> <p>11 ran their own clinic so...</p> <p>12 Q. Let's look quickly at MK-15.</p> <p>13 (Whereupon, Kitchens Exhibit MK-15 was marked for</p> <p>14 identification.)</p> <p>15 By MR. BURGOYNE:</p> <p>16 Q. And do you recognize this, Markcus, as the</p> <p>17 email you sent me reflecting information you got from</p> <p>18 the AAMC?</p> <p>19 A. Yes. That was an unofficial email that I sent</p> <p>20 to you for your courtesy.</p> <p>21 Q. Okay. And AAMC is the Association of American</p> <p>22 Medical Colleges; is that correct?</p> <p>23 A. Clarification. Clarification. Are we -- are</p> <p>24 we able to use emails, things that we have sent each</p> <p>25 other in emails as part of exhibits?</p>
<p>198</p> <p>1 Q. Okay. All right. Let's go to MK-11.</p> <p>2 (Whereupon, Kitchens Exhibit MK-11 was marked for</p> <p>3 identification.)</p> <p>4 By MR. BURGOYNE:</p> <p>5 Q. And this is the declaration that your mother</p> <p>6 signed in this lawsuit; is that correct?</p> <p>7 A. Yep. Can I see her signature at the bottom?</p> <p>8 But no, yep, that's cool.</p> <p>9 Q. Okay.</p> <p>10 A. Yeah, we're good. I know this.</p> <p>11 Q. All right. And right after I told you I wasn't</p> <p>12 going to ask you again, but the contents of this, is</p> <p>13 this information you prepared for your mother and then</p> <p>14 asked her to review and sign?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Your mother is not a medical provider, is she?</p> <p>17 Is she a doctor or any type of health care</p> <p>18 professional?</p> <p>19 A. No.</p> <p>20 Q. Okay. And I ask because the footnote here made</p> <p>21 it sound like maybe she was.</p> <p>22 A. Oh, no. The footnote -- the reason I put the</p> <p>23 footnote there because that was the medication. I</p> <p>24 wanted to give a reference to the judge to cite it what</p> <p>25 ritalin was. And that is a form of ADHD medication that</p>	<p>200</p> <p>1 Q. Well, we're able to use documents that we share</p> <p>2 with each other. I don't ordinarily attach emails that</p> <p>3 I've exchanged with somebody but just the contents of a</p> <p>4 document that you provided.</p> <p>5 A. Got 'ya. Because I was just -- I just wanted</p> <p>6 to clarify that because I sent that as a courtesy copy</p> <p>7 to you for your record which is why I didn't actually</p> <p>8 file it with the courts. But okay. Thank you.</p> <p>9 Q. Okay. Yeah, I assume this is what you were</p> <p>10 relying on when you stated that you could apply to the</p> <p>11 match up until May 31st.</p> <p>12 A. Yes.</p> <p>13 Q. What is the status of your residency process?</p> <p>14 Do you have an online account with --</p> <p>15 A. Yes, I do.</p> <p>16 Q. -- with ERAS?</p> <p>17 A. Yes, I do.</p> <p>18 Q. And ERAS stands for Electronic Residency</p> <p>19 Application Service; is that correct?</p> <p>20 A. Yes.</p> <p>21 Q. And AAMC operates that service?</p> <p>22 A. Yes.</p> <p>23 Q. To your understanding?</p> <p>24 A. Yes, I -- yep.</p> <p>25 Q. Okay. Let's go to MK-16.</p>

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<p style="text-align: right;">201</p> <p>1 (Whereupon, Kitchens Exhibit MK-16 was marked for 2 identification.) 3 By MR. BURGOYNE: 4 Q. This is a document from AAMC's website that 5 talks about how to apply for residency positions. Have 6 you ever visited AAMC's website? 7 A. Yes. 8 Q. Okay. And you've gone there looking for 9 information on applying to residency programs? 10 A. Yes. And saw the timeline. 11 Q. Okay. If you look, if we scroll down a little 12 bit here, it says, as part of your ERAS application 13 you've got to have all of these -- your portfolio will 14 include an application or CV, letters of recommendation, 15 personal statement, medical school transcripts, medical 16 student performance evaluation, and licensing exam 17 transcript. Which of these do you have in final form 18 right now? 19 A. I have all of those documents except for the 20 last, the licensing exam transcript from the USMLE STEP 21 1 and STEP 2. 22 Q. And are they part of your ERAS portfolio right 23 now? Have you downloaded any of those documents yet? 24 A. No. I'm -- I'm not downloading anything on 25 there at the moment.</p>	<p style="text-align: right;">203</p> <p>1 Q. Okay. Now as I understand what they are saying 2 here, it looks like you have to have a token in order to 3 begin your ERAS account; is that correct? 4 A. So -- right. Which I have already -- I begin 5 that last -- in the fall. 6 Q. Okay. Do you have -- have you acquired an ERAS 7 token? 8 A. I got MyERAS -- wait. I need to clarify if I 9 have MyERAS token or not. But I think that I did 10 purchase MyERAS token because I know I have already 11 registered my -- MyERAS. 12 Q. It looks like you have to get this from ECFMG, 13 your token. 14 A. This is correct. 15 Q. And you don't recall whether you have a token 16 right now from ECFMG? 17 A. I -- I think that I do. 18 Q. Okay. And it looks like you have to have that 19 token before you can initiate your MyERAS application; 20 is that correct? 21 A. I'm not sure about if you have to have a token 22 before you can register. You can register -- before you 23 can -- so you can always register, but you have to have 24 a token before you can actually apply to a residency 25 program.</p>
<p style="text-align: right;">202</p> <p>1 Q. Okay. 2 A. Until after -- after the hearing. 3 Q. Okay. Now this -- this document says that your 4 medical school is responsible for the last three 5 components but -- or the -- yeah, the last three. Is it 6 your statement though that you've already got your 7 transcript and your evaluation from your medical 8 school? 9 A. I have all of that. I have my official 10 transcripts, evaluations. The licensing exam transcript 11 I do not have. Yeah. 12 Q. Okay. 13 A. But I'm also -- if it has to be electronically 14 uploaded from the school to actually do it, then I would 15 have that done. 16 Q. All right. Let's go to MK-17. 17 (Whereupon, Kitchens Exhibit MK-17 was marked for 18 identification.) 19 By MR. BURGOYNE: 20 Q. You'll see this is an additional document that 21 talks about registering for MyERAS for residency. Is 22 this a document you've reviewed before? 23 A. Yes. And you have to get your token that you 24 pay for, and you can even pay for it to go for the next 25 year, et cetera. Yes.</p>	<p style="text-align: right;">204</p> <p>1 Q. Okay. Let's go to MK-18. 2 (Whereupon, Kitchens Exhibit MK-18 was marked for 3 identification.) 4 By MR. BURGOYNE: 5 Q. And do you recognize this timeline for applying 6 to residency programs from the AAMC website? 7 A. I have seen that and that was the reason that I 8 called and -- and was verified. 9 Q. Okay. And so this is a -- this is a timeline 10 that applies to you because you are an international 11 medical graduate; is that correct? 12 A. I -- I'm not sure if it's just because I'm an 13 IMG, even though I know it does say that up there, but 14 I'm not -- I'm not familiar with seeing on their website 15 the IMG part. I just know that this document looks 16 different from their actual website from what I've 17 seen. 18 Q. Okay. 19 A. And on the website it -- I don't remember 20 seeing IMG specifically, other than their specific 21 timelines, and that's why I made sure I called first and 22 got that -- 23 Q. Okay. 24 A. -- in writing. 25 Q. Okay. And if you participate in ERAS 2023, is</p>

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